

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

NORTH AMERICAN BUTTERFLY
ASSOCIATION DBA NATIONAL BUTTERFLY
CENTER, *et. al.*,

Plaintiff,

v.

NEUHAUS & SONS, LLC, *et al.*,
Defendants.

Case No.: 7:19-cv-00411

DECLARATION OF DAVID OLIVEIRA

I, David G. Oliveira, declare under the penalties of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am an attorney admitted to practice before this Court and am a partner with Roerig, Oliveira and Fisher, attorneys for defendant WeBuildTheWall, Inc. (“WBTW”). I have knowledge of the facts and circumstances stated herein.

2. I submit this declaration in support of the WBTW’s motion to dismiss the First Amended Complaint by Plaintiffs North American Butterfly Association (“NABA”) and Marianna Trevino Wright (“Wright” and, together with NABA, “Plaintiffs”).

3. Attached hereto as Exhibit 1 is a true and correct copy of the Notice of Dismissal as to Defendant We Build The Wall Inc., filed on December 10, 2019, in *United States of America v. We Build the Wall, Inc., et al.*, Civ. No. 7:19-cv-00403, Docket No. 11.

4. Attached hereto as Exhibit 2 is a true and correct copy of a November 14, 2019 tweet from the Twitter account of “@NatButterflies,” available on <https://twitter.com/NatButterflies/status/1195033730047467520>.

5. Attached hereto as Exhibit 3 is a true and correct copy of a November 15, 2019 tweet from the Twitter account of “@NatButterflies,” available on <https://twitter.com/NatButterflies/status/1195033730047467520>.

Dated: January 2, 2020
Hidalgo County, Texas

/s/ David G. Oliveira
David George Oliveira
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Counsel for Defendant WeBuildTheWall, Inc.

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EXHIBIT 1

TO

DECLARATION OF DAVID OLIVEIRA

ENTERED

December 10, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

UNITED STATES OF AMERICA,

§

§

VS.

§ CIVIL ACTION NO. 7:19-CV-00403

§

FISHER INDUSTRIES, *et al*,

§

§

Defendants.

§

§

ORDER OF DISMISSAL AS TO DEFENDANT WE BUILD THE WALL, INC.

On December 5, 2019, Plaintiff United States of America filed its Complaint for Injunctive Relief against Defendants We Build the Wall, Inc., Fisher Industries, Fisher Sand and Gravel Co., and Neuhaus & Sons, LLC. Dkt. No. 1. Plaintiff alleged that Defendant We Build the Wall, Inc., “contracted with Fisher Industries, a subsidiary of Fisher Sand and Gravel Co., to construct a bollard structure, wall or similar structure in the floodplain along the Rio Grande River in an area near RGV03 by Bentsen State and Anzalduas Park, south of Mission, TX.” *Id.* at ¶ 13.

In 1970, Plaintiff entered into a treaty with Mexico which requires Plaintiff to “prohibit the construction of works in its territory which, in the judgment of the [International Boundary and Water Commission, United States and Mexico], may cause deflection or obstruction of the normal flow of the [Rio Grande] [R]iver or of its flood flows.” Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary, U.S.-Mex., Nov. 23, 1970, 23.1 U.S.T. 373, 391 Art. IV(B)(1) (1972). In order to ensure compliance with this requirement of the 1970 Treaty, the International Boundary and Water Commission, United States and Mexico, United States Section (“USIBWC”) requires those proposing to carry out projects in the U.S. floodplain to “submit hydraulic modeling for

their project to the USIBWC.” Dkt. No. 1 at ¶ 11. If the proposed project does not cause any deflection or obstruction of the normal flow of the river or its flood flows, then the USIBWC “issues a letter of no objection to the project proponent” and the project may move forward. *Id.*

In its Complaint, Plaintiff alleges that Defendants failed to comply with this requirement and have commenced construction on their project prior to any analysis by the USIBWC, which may lead to a violation of the 1970 Treaty as well as other statutes. *Id.* at ¶¶ 13–32. Accordingly, Plaintiff sought a temporary restraining order, and after a hearing, a preliminary injunction, enjoining Defendants from moving forward with the construction project prior to their compliance with the requirements of the USIBWC pursuant to the 1970 Treaty between the United States and Mexico. *Id.* at ¶¶ 33–35; Dkt. No. 5 at 11–12.

On the afternoon of December 5, 2019, the Court held a hearing on Plaintiff’s request for a temporary injunction. All parties were represented at the hearing except for Defendant Neuhaus & Sons, LLC, with whom Plaintiff had yet to make contact. At the hearing, We Build the Wall, Inc., represented that it did not initiate the construction project or contract with Fisher Industries. Further, the organization, through its counsel, stated that it had no property interest in the relevant land. Counsel for We Build the Wall, Inc., stated that the extent of the organization’s involvement in the project was the financial assistance it provided to Fisher Industries, the construction company overseeing the project. We Build the Wall, Inc., represented that it had contributed about five percent of the total cost of the project and that it was “best equated to a passive investor,” noting that it has no control over the project or the property. Counsel for Fisher Industries affirmed We Build the Wall, Inc.’s representations, stating that one of the Fisher entities will acquire an interest in the property and that Fisher entities are undertaking the construction.

Based on these representations, Plaintiff, as well as all other parties represented at the hearing, had no objection to the dismissal of We Build the Wall, Inc. Accordingly, considering both the parties' representations at the December 5, 2019 hearing as to We Build the Wall, Inc.'s involvement in the action as well as Plaintiff's lack of opposition to the entity's dismissal, the Court hereby **DISMISSES** We Build the Wall, Inc., as a Defendant to this action without prejudice. *See* FED. R. CIV. P. 21 ("On motion or on its own, the court may at any time, on just terms, add or drop a party.").

SO ORDERED this 10th day of December, 2019, at McAllen, Texas.



Randy Crane
United States District Judge

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EXHIBIT 2

TO

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National Butterfly

@NatButterflies

Follow



ALERT: WE NEED YOUR HELP!! The We Build the Wall, Inc. Steve Bannon + Brian Kolface criminals are here, clearing the banks of the Rio Grande River on 6,000 acres of private property just east of us. What this... facebook.com/natbutterflies ...

9:40 AM - 14 Nov 2019

30 Retweets 18 Likes



21

30

18



Don Day @ldenterprise · 20 Nov 2019

Replying to @NatButterflies

I'm going to help!

I'm making another donation to We Build The Wall immediately!!!!!!

2

1

14



K Pike @kpikejr · 17 Nov 2019

Replying to @NatButterflies

WE NEED THE WALL!

2

1

16



Constance @Constance66C · 18 Nov 2019

Replying to @NatButterflies

Can't wait to come visit!

2

1

7



Andrew Boyd @aboydvz · 20 Nov 2019

Replying to @NatButterflies

The wall will protect our butterflies from terrorists.

2

1

6

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EXHIBIT 3

TO

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**National Butterfly**

@NatButterflies

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This hate group has taken down their 6 minute video boasting about their criminal project on private property, since we shared it. Thank you for...

Group clears private riverfront land to build border wall in South Texas

A controversial private group, We Build the Wall, boasted on social media Thursday that it has begun riverfront land clearing on the Rio Grande in Mission, Texas, to bu...
borderreport.com

5:40 AM - 15 Nov 2019

18 Retweets 42 Likes



21

18

42

**Ramona Christian** @MonaChristian65 · 16 Nov 2019

Replying to @NatButterflies

Build the wall

8

18

8

**Dave Miller** @dmiller4thewin · 16 Nov 2019

Replying to @NatButterflies